

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA
SNO CO LLC; PATH AMERICA FARMER'S
MARKET, LP; PATH AMERICA KING CO
LLC; PATH AMERICA TOWER, LP; PATH
TOWER SEATTLE, LP; POTALA TOWER
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA
VILLAGE KIRKLAND, LLC; DARGEY
DEVELOPMENT, LLC; DARGEY
ENTERPRISES, LLC; PATH OTHELLO,
LLC; PATH FARMER'S MARKET, LLC; and
DARGEY HOLDINGS, LLC,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

STIPULATED MOTION AND ~~PROPOSED~~
ORDER MODIFYING PREVIOUS ORDERS
APPROVING FINAL DISPOSITION OF
POTALA TOWER RELATED ASSETS AND
EXTENDING DEADLINE FOR CLOSING OF
RESTRUCTURING TRANSACTION

NOTE ON MOTION CALENDAR: Date of
Filing per [Local Civil Rules 10(g), 7(d)1]

STIPULATED MOTION

PLEASE TAKE NOTICE that Michael A. Grassmuck (the "Receiver"), the Court-appointed receiver for Path America, LLC; Path America SnoCo, LLC; Path America Farmer's Market, LP; Path America KingCo, LLC; Path America Tower, LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC; Potala Village Kirkland, LLC; Dargey Development, LLC; Dargey Enterprises, LLC; Path Farmer's Market, LLC; and Dargey Holdings, LLC, Plaintiff Securities and Exchange Commission ("SEC"), and Defendant Lobsang Dargey and Relief Defendant Path Othello, LLC (together "Dargey")¹, hereby file this stipulated motion ("Stipulated Motion") for an order modifying this Court's prior orders approving the final disposition of Potala Tower Seattle, LLC related assets in connection with the restructuring transaction ("Restructuring Transaction") for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington ("Tower Project"), to extend the existing deadline to close the Restructuring Transaction.

WHEREAS, on May 20, 2016, the Court entered an Order approving the Receiver's recommendation ("Preliminary Approval Order") to select the proposal submitted by Binjiang Tower Corp. ("Binjiang"), an affiliate of PH Seattle Tower I, LLC ("Molasky"), and Lobsang Dargey and certain affiliated companies for the Restructuring Transaction;

WHEREAS, the Preliminary Approval Order required, among other things, the Receiver and the parties to the Restructuring Transaction to finalize and submit for approval final agreements memorializing the final terms of the transaction;

WHEREAS, in accordance with the terms of the Preliminary Approval Order, on June 23, 2016, the Receiver filed a Motion for Final Approval of Disposition of Potala Tower Related Assets ("Final Approval Motion"), which seeks the final approval of this Court for the Restructuring Transaction;

WHEREAS, on July 15, 2016, the Court entered its Order Granting Final Approval of Disposition of Potala Tower Related Assets ("Final Approval Order"), granting final approval of

¹ The Receiver, SEC, and Dargey are collectively referred to herein as the "Parties."

1 the terms of the Restructuring Transaction as memorialized in the final agreements ("Final
2 Agreements") previously submitted as Exhibit B to the Receiver's Declaration filed in support of
3 his Final Approval Motion and as sealed exhibits to the Stipulated Motion filed on June 29, 2016
4 in support of the Final Approval Motion;

5 **WHEREAS**, the terms of the Final Agreements, the Preliminary Approval Order and the
6 Final Approval Order, contemplate and require the Restructuring Transaction to be closed on or
7 before August 31, 2016;

8 **WHEREAS**, as a condition to closing the Restructuring Transaction, the Final
9 Agreements, and specifically Section 12.1(c) of the fully-executed Master Agreement dated June
10 23, 2016 ("Master Agreement"), require a \$100 million construction loan ("Construction Loan") to
11 be secured in order to provide construction financing for the Tower Project, and further
12 contemplate that the Construction Loan would be obtained from Voya Investment Management
13 ("Voya") and closed by no later than August 31, 2016;

14 **WHEREAS**, Section 4.1 of the Master Agreement further requires various assets to be
15 transferred at the closing of the Restructuring Transaction;

16 **WHEREAS**, Binjiang and Molasky have diligently attempted to negotiate the final terms
17 of the Construction Loan with Voya, but require additional time to secure agreement on final
18 terms and secure a final commitments to close the Construction Loan as Voya has indicated it will
19 jointly make the loan with participation from another lender, Guardian Life Insurance
20 ("Guardian");

21 **WHEREAS**, on August 22, 2016, Voya's Loan Committee notified Binjiang that it had
22 approved Voya's participation in a \$50 million portion of the Construction Loan, with the
23 Commitment Letter expected this Friday, August 26, after only minor remaining revisions;

24 **WHEREAS**, Binjiang and Molasky have informed the Receiver that, through their
25 negotiations with Voya and Guardian, they anticipate that Guardian will issue its final
26 commitment letter for its \$50 million portion of the Construction Loan by no later than September
27 22, 2016, after the next soonest Loan Committee formal meeting in the week of September 15,

1 2016 and that the Construction Loan, funded by Voya and Guardian, can then be closed on or
2 before October 24, 2016;

3 **WHEREAS**, the Receiver believes that a short extension of the closing deadline for the
4 overall Restructuring Transaction will be the best means for ensuring that construction lenders
5 (expected to be Voya and Guardian), will simultaneously close the necessary Construction Loan
6 for the Project, and the Restructuring Transaction may proceed to closing and the Tower Project
7 may be completed as contemplated;

8 **WHEREAS**, the Receiver further believes that, although success on appeal is not
9 guaranteed, the timely closing of the Restructuring Transaction and completion of the Tower
10 Project still present the best option to maximize the potential for success of the pending appeal
11 with the U.S. Citizenship and Immigration Services and for the Tower Project's EB-5 investors to
12 achieve the immigration benefit they originally sought; and

13 **WHEREAS**, the Parties have conferred regarding extending the deadline to close the
14 Restructuring Transaction, and have agreed that the current deadline for closing by August 31,
15 2016, should be extended for a period of approximately 54 days to October 24, 2016, in order to
16 provide additional time for Binjiang and Molasky to close their Construction Loan, and that the
17 required transfer of assets pursuant to the terms of the Master Agreement as described herein be
18 facilitated through a mutually agreed-upon escrow company at or before the extended deadline for
19 closing.

20
21 **THEREFORE**, the Parties hereby **STIPULATE** and **AGREE** as follows:

- 22 1. The deadline for closing the Restructuring Transaction, as set forth in the
23 Preliminary Approval Order and the Final Approval Order, is to be extended to October 24, 2016;
24 2. The Final Agreements shall be amended by the parties thereto to reflect the
25 extension of the deadline for closing;

1 3. The required transfer of assets pursuant to the terms of the Master Agreement shall
2 be facilitated through a mutually agreed-upon escrow company at or before the extended deadline
3 for closing;

4 4. Binjiang and Molasky shall diligently continue to pursue the issuance of the final
5 Construction Loan commitments by no later than September 22, 2016, and the Construction loan
6 shall close by no later than October 24, 2016; and

7 5. If Binjiang and Molasky are: (1) unable to secure the issuance of a final loan
8 commitment from Guardian and Voya, respectively, or other construction lender satisfactory to the
9 Receiver on or before September 22, 2016, or (2) unable to close the Construction Loan by no
10 later than October 24, 2016 for a combined \$100 million; or (3) close the Restructuring
11 Transaction by October 24, 2016, the Restructuring Transaction may be deemed void upon
12 application by any party thereto and further order of the Court.

13
14 **IT IS SO STIPULATED.**

15 Dated: August 26, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

17 By: s/ David R. Zaro

18 David R. Zaro, Esq. #124334 (CA)
19 *(Pro Hac Vice Granted Oct. 26, 2015)*
20 Michael R. Farrell, Esq. #173831 (CA)
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 Attorneys for Receiver
 MICHAEL A. GRASSMUECK

1 Dated: August 26, 2016

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15 *LLC; and Path Othello, LLC*

11 Dated: August 26, 2016

SECURITIES AND EXCHANGE
COMMISSION

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13
14 By: s/ Susan F. LaMarca

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~~PROPOSED~~ ORDER

The Court, having read the Stipulated Motion and Proposed Order Modifying Previous Orders Approving Final Disposition of Potala Tower Related Assets and Extending Deadline for Closing of Restructuring Transaction ("Stipulated Motion"), filed by Michael A. Grassmueck, the Court-appointed receiver for Path America, LLC; Path America SnoCo, LLC; Path America Farmer's Market, LP; Path America KingCo, LLC; Path America Tower, LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC; Potala Village Kirkland, LLC; Dargey Development, LLC; Dargey Enterprises, LLC; Path Farmer's Market, LLC; and Dargey Holdings, LLC, Plaintiff Securities and Exchange Commission, and Defendant Lobsang Dargey and Relief Defendant Path Othello, LLC—which seeks an order modifying this Court's prior orders approving the final disposition of Potala Tower Seattle, LLC related assets in connection with the restructuring transaction ("Restructuring Transaction") for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington ("Tower Project"), to extend the existing deadline to close the Restructuring Transaction—and good cause appearing therefor, hereby **ORDERS** as follows:

1. The Stipulated Motion is hereby Approved;
2. The August 31, 2016 deadline for closing the Restructuring Transaction, as set forth in the May 20, 2016 Order approving the Receiver's recommendation for disposition of the Tower Project related assets and the July 15, 2016 Order Granting Final Approval of Disposition of Potala Tower Related Assets, is hereby extended to October 24, 2016;
3. The final agreements memorializing the terms of the Restructuring Transaction, previously submitted as Exhibit B to the Receiver's Declaration filed in support of his Motion for Final Approval of Disposition of Potala Tower Related Assets ("Final Approval Motion") and as sealed exhibits to the Stipulated Motion filed on June 29, 2016 in support of the Final Approval Motion, shall be amended by the parties thereto to reflect the extension of the deadline for closing;

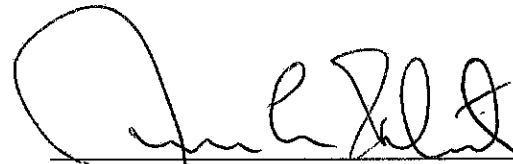
4. The required transfer of assets pursuant to the terms of the Master Agreement dated June 23, 2016 ("Master Agreement") shall be facilitated by the parties thereto through a mutually agreed-upon escrow company at or before the extended deadline for closing

5. Binjiang and Molasky shall diligently continue to pursue the issuance of a final loan commitment from Guardian Life Insurance ("Guardian") for its \$50 million portion of the \$100 million construction loan ("Construction Loan"), as contemplated in Section 12.1(c) of the Master Agreement, by no later than September 22, 2016, and close the Construction Loan by no later than October 24, 2016; and

6. If Binjiang and Molasky are: (1) unable to secure the issuance of a final loan commitment from Guardian for its \$50 million portion of the Construction Loan by September 22, 2016 for a combined \$100 million loan commitment, or (2) close the Construction Loan by no later than October 24, 2016 through the issuance of a combined \$100 million loan from Voya and Guardian or other construction lenders, or (3) close the Restructuring Transaction by October 24, 2016, the Restructuring Transaction may be deemed void upon application by any party thereto and further order of the Court.

IT IS SO ORDERED.

Dated: 29 August, 2016



Hon. James L. Robart
Judge, United States District Court

CERTIFICATION OF MEET AND CONFER

In accordance with Local Civil Rule 5(g)(3)(A), I hereby certify that I met and conferred with all other parties to this Stipulated Motion and Proposed Order Modifying Previous Orders Approving Final Disposition of Potala Tower Related Assets and Extending Deadline for Closing of Restructuring Transaction on August 24 and 25, 2016, by way of e-mail communications with counsel for the Parties, and the Parties agree that August 31, 2016 deadline to close the restructuring transaction for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington previously established by the Court should be extended to October 24, 2016.

Dated: August 26, 2016

s/ David R. Zaro

David R. Zaro, Esq. #124334 (CA)

(Pro Hac Vice Granted Oct. 26, 2015)

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2016, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

Dated: August 26, 2016

s/ David R. Zaro

David R. Zaro, Esq. #124334 (CA)
(Pro Hac Vice Granted Oct. 26, 2015)